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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,760	12/08/2003	John A. Dyjach	279.663US1	3450

21186 7590 03/01/2006

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EXAMINER

SMITH, TERRI L

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 03/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/730,760</p>	<p>Applicant(s) DYJACH ET AL.</p>	
	<p>Examiner Terri L. Smith</p>	<p>Art Unit 3762</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED on 09 February 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 - b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

- 3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:
 - (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ They raise the issue of new matter (see NOTE below);
 - (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

- 4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
- 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
- 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
- 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

- 8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
- 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
- 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

- 11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
- 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
- 13. ☐ Other: _____.

[Handwritten Signature]
24 February 2006

GEORGE R. EVANS
 PRIMARY EXAMINER
 2/24/06

Continuation of 11. does NOT place the application in condition for allowance because: In the Office Action mailed on 7 December 2006, Examiner has clearly cited where each claimed limitation is located in each art of record used for each rejection, and in the interest of brevity, will not re-state them herein.

Applicant asserts that the 102/103 rejection is confusing and inconsistent. Examiner clearly indicated that the 103 rejection is "or, in the alternative" (paragraph 7). Examiner cited where the Schroepel et al. (U.S. Patent 5,749,900) art read on the Applicant's added amendment of "one CRT-related data parameter associated with time" to claims 29, 49, and 54. Examiner additionally cited how the Stone et al. (U.S. Patent 6,280,409) art was used to support the alternative rejection addressing the amendment.

Applicant further pointed to a substantial portion of the specification for discussions about and examples of CRT and trended CRT data. A reading of the specification provides no evidence to indicate that these limitations must be imported into the claims to give meaning to the disputed terms. Applicant misinterprets the principle that claims are interpreted in the light of the specification. Although these elements are found as examples or embodiments in the specification, they were not claimed explicitly (see argument below for apparatus claims). Nor were the words that are used in the claims defined in the specification to require these limitations. Therefore, in the broadest reasonable interpretation, CRT and trended CRT data can be any CRT and data trends. and, for one of ordinary skill in the art, the Schroepel and Stone art read on the claimed limitations as cited by the Examiner in the referenced Office Action.

Regarding Applicant's argument against the 103 rejection of the claims, Examiner respectfully reminds Applicant that, for an apparatus claim, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. As for Applicant's argument that the rejection does not provide an objective rationale for combining the references, the Examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. In this case, as stated at the beginning of why this application is not in condition for allowance, Examiner has clearly cited where each claimed limitation is located in each art of record used for each rejection.

In Applicant's request for reconsideration of the finality of the rejection, Applicant indicated that the amendment did not change the intended scope of the claims, nor did the previous Office Action nor the present Office Action provide references that showed CRT-related data trends. Applicant failed to cite the amendment that further limited the CRT-related data trends, which was the basis for searching for additional art. Adding the limitation of "associated with time" is a new limitation that directed the Examiner to find this limitation, be it with new or existing art. In either case, new or existing art, the action is still final as Examiner has shown how Schroepel et al. (U.S. Patent 5,749,900) (existing art) reads on the amended claimed limitation. Examiner has additionally shown how Stone et al. (new art) reads on the amended claim limitation of discussion herein above. Consequently, the action remains final.